

(2009) 04 PAT CK 0024

In the Patna High Court

Case No : MA No's. 752 and 684 of 2008

Mahanth Shivanand Giri

APPELLANT

Vs

The State of Bihar and Others
 The Bihar State Hindu
Religious Trust Board Vs Mahanth Shivanand Giri and Others

RESPONDENT

Date of Decision : 20-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151

Citation : (2009) 4 PLJR 484

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Advocate : Shashi Shekhar Dwivedi, Ravi Shankar Dwivedi in 752 and Mr. Ambuj Nayan Choubey in 684, for the Appellant; Shashi Shekhar Dwivedi, Ravi Shankar Dwivedi, Lakshman Lal Pandey (in 684) and Mr. Ambuj Nayan Choubey (in 752), for the Respondent

Final Decision : Dismissed

Judgement

Mihir Kr. Jha, J.—Heard Mr. Ambuj Nayan Chaubey. counsel for the appellant in M.A. No. 684 of 2008 and Mr. Shashi Shekhar Dwivedi, learned Senior Counsel appearing on behalf of the appellant in M.A. No. 752 of 2008. Both these appeals have been directed against a common order dated 24.9.2008 in Title Suit No. 111 of 2008 passed by the Sub-Judge-IV, Motihari, whereby and whereunder, the prayer for injunction made by the plaintiff, appellant in M.A. No. 752 of 2008 has been rejected with certain observations purportedly u/s 151 of the Civil Procedure Code. The plaintiff-appellant in M.A. No. 752 of 2008 is aggrieved by a portion of the order where prayer for injunction has been rejected, whereas, defendant-appellant in M.A. No. 684 of 2008 is only aggrieved by last paragraph of the impugned order where certain observations have been made purportedly u/s 151 of the CPC (in short C.P.C).

2. In order to appreciate the controversy involved in these two appeals one has to take note of the fact that on 13.3.2008 Title Suit No. 111 of 2008 was filed by

Mahanth Shivanand Giri (appellant in M.A. No. 752 of 2008) claiming the following reliefs:-

(a) That on consideration of the facts mentioned above it be declared that the plaintiff has absolute title and possession over Schedule I and 1(k) land also over his trust constituted under deed of "Samarpan Nama" dt. 14.12.1948 and the defendants have no authority at all to interfere with the management of the property of private trust and it be also declared that the notification Annexure (i) is the result of extra judicial exercise of the power by the Bihar Board of Religious Trust Patna.

(b) By a decree of permanent prohibitory injunction the defendants be restrained from taking possession or management of the said property and individually detailed and described properties at the foot of this plaint and from realizing the income coming therefrom and be further restrained from taking the properties in their control and management in any manner. And in the mean time ad interim injunction may be granted to the same effects.

(c) That cost of the suit be also awarded in favour of the plaintiff.

(d) That any other and such further relief which the court may deem fit be also granted to plaintiff.

3. From copy of the plaint it is also clear that the plaintiff-appellant Mahanth had categorized the land in Schedule I and Schedule-I(k) by explaining that Schedule-I land belongs to the plaintiff appellant-mahanth himself, whereas, the land in Schedule-I(k) was the property of private trust. From the averments made in the plaint it also becomes clear that by Samarpannama dated 14.12.1948 Mahanth Shiv Shankar Giri, through whom the plain tiff-appellant claims his right had constituted a Committee to look after and manage the affairs of Sumeshwar Nath Sanskrit Vidyalaya, Areraj and for that purpose he had dedicated 4 kathas 11 dhurs of land out of his own personal property over which the temple with deities of Lord Shiva known as Sumeshwar Nath, Mahabir Jee, Parbatijee and other were established It has also been claimed that Bettiah Rai had initially granted settlement of agricultural land as well as jamindari interest in favour of Mahanth Vaidya Nath Giri and with the assemblage of devotees had constructed certain shops and had settled those shops for receiving rent. The only other important thing to be noted from the plaint is that the entire property whether it be the temple or one claimed by mahanth in his individual capacity was registered as religious trust property under the Bihar Hindu Religious Trust Board vide registration Nos. 44 and 44A.

4. It had been claimed by the plaintiff-appellant-mahanth in the plaint that the Board by memo No. 1905-17-07/2006 dated 15.7.2006 had framed a scheme u/s 32 of Bihar Hindu Religious Trust Act, hereinafter referred to as the Act, for the temple and had constituted a Trust Committee of nine persons in which plaintiff-appellant was himself made the Chairman of the Trust Committee. As a matter of fact, after this Trust Committee remained in office for the period of nearly two

years, the plaintiff-appellant had filed the present suit on 13.3.2008, and had disputed the nature of trust by asserting that it was a private trust and not a public religious trust and thus Board's notification u/s 32 of the Act was wholly without jurisdiction.

5. The plaint was also accompanied with an injunction petition in terms of Order 39, rules 1 and 2 of the C.P.C. wherein it was alleged that the defendant, State of Bihar as well as Board were bent upon to disturb the management of Schedule-I(k) property and his possession over Schedule-I property was also threatened. The added emphasis in the injunction petition was on an aspect that certain shops on plot Nos. 2045, 2046, 2047, 2048, 2067, 2040, 2043 and 2044 had been constructed by the plaintiff and were in his possession and those shops were let out by him to different tenants, from whom the plaintiff mahanth was also realizing rent. The plaintiff-mahanth had claimed that he was threatened due to activities of Board for grabbing forcible possession and management of property of Schedule-I and Schedule-I(k) of the plaint and as such the plaintiff-appellant-mahanth had made a prayer for injunction in the following terms:-

"Under the facts and circumstances it is humbly prayed that your honour would be kind enough to restrain the depts. to interfere in control and management of the private trust which is run by the plaintiff and they be also restrained from taking forcible possession of the property described in Sch. 11(k) of the plaint and they also be restrained from interfering in possession of the plaintiff."

6. The said prayer of injunction of the plaintiff-appellant-mahanth on contest by the defendant Nos. 1 and 2, State of Bihar as also defendant Nos. 3 and 4 i.e., the Board and its administrator was rejected with certain observations in the concluding paragraph which would be noticed hereinafter.

7. Counsel for the appellant-Board, in fact, seems to be aggrieved by those observation made in the last paragraph of the impugned order, which for the sake of clarity is reproduced hereinbelow:-

8. The appeal of the Board is in fact only against the aforementioned underlined portion. Counsel for the Board while assailing the aforementioned observations of the trial court has submitted that once the court below had clearly recorded that there was neither prima facie case nor balance of convenience nor irreparable loss in favour of the plaintiff-mahanth, it ought to have not given any direction against the Board, by taking recourse to u/s 151 of the C.P.C.

9. This part of submission of the learned counsel for the Board was seriously opposed by Mr. Dwivedi, learned Senior Counsel appearing for the plaintiff mahanth by taking a plea that Schedule-I was the personal property of mahanth and therefore the underlined part of the directions of the court below was wholly justified.

10. In the opinion of this Court when the trial court had categorically held that there was no prima facie case of the plaintiff-mahanth as against the Board, it

had no business to restrain the Board as has been done in the aforesaid underlined portion of last paragraph of the impugned order. It cannot be envisaged in law when that a prayer for injunction will be refused by the court below holding that none of three ingredients for grant of injunction were fulfilled by the plaintiff yet it could have gone to give relief to the plaintiff mahanth in an indirect manner in terms of Section 151 of the C.P.C. Section 151 of the C.P.C, cannot be made a substitute for grant of injunction as there is a special provision for the same under Order 39 Rules 1 and 2 of C.P.C. Reference in this connection may be made to the judgment of Apex Court in the case of Ram Chand and Sons Sugar Mills Pvt. Ltd. Vs. Kanhaya Lal Bhargava and Others, wherein it was held that inherent powers of the Court u/s 151 C.P.C, is in addition to and complimentary to the powers expressly conferred under the Civil Procedure Code, but that power will not be exercised if its exercise is inconsistent with, or comes into conflict with any of the powers expressly or by necessary implication conferred by the other provisions of the Code. Thus there being a specific provision under Order 39 Rules 1 and 2 for grant of injunction, that by itself by necessary implication rule out of application and exercising inherent power of the court u/s 151 C.P.C, for issuing any direction for that very relief of injunction.

11. It has to be noted that even the counsel for the plaintiff-mahanth had admitted that rightly or wrongly even the Schedule-I property, allegedly belonging to mahanth in his personal capacity stood registered in the Board vide registration No. 44 and therefore, it could not be said that the Board had no right to take pos session and/or manage such property. The issue as to whether land of Schedule-I belongs to mahanth in his personal capacity or of the religious trust to be managed by the Board would of course be gone into by the court below the light of the evidence, but prima facie when the court below itself had found that there was no order including the earlier High Court judgment in favour of the plaintiff mahanth, passed on contest against the Board, it had to proceed that Schedule-I property were also property of the religious trust for which it was registered with the Board as Registration No. 44 in terms of Section 34 of the Act. Any other conclusion at the moment would be wholly premature and thus the court below was not justified in yet restraining the Board from controlling and managing the affairs of the property mentioned in Schedule-I of the plaint, while rejecting the prayer of injunction of the plaintiff-mahanth.

12. Similarly the direction in the last paragraph of the impugned order that the Trust Committee headed by the plaintiff-mahanth as constituted by the Board on 15.7.2006 would keep on functioning in terms of samarpannama dated 14.12.1948 is also illogical and in fact illegal because the Board had already framed a scheme u/s 32 of the Act laying down the elaborate manner and procedure for functioning of the religious trust and the same could not have been even looked into much less superseded by enforcing and giving a lease of life to the deed of samarpannama dated 14.12.1948 in view of the specific statutory bar u/s 32(3) read with Section 77 of the Act

13. The aforesaid aspect would be also noticed in some greater detail hereinafter while examining the plea of the plaintiff-appellant-mahanth as with regard to refusal of injunction as raised in his appeal, M.A. 752/2008. Mr. Dwivedi in fact while pressing appeal filed by the plaintiff-appellant-mahanth would submit that the court below failed to take into account that the order u/s 32 of Bihar Hindu Religious Trust Act was only in respect of Schedule-I(k) property and as such the court below had failed to appreciate that the plaintiff-appellant was still entitled for injunction at least in respect of Schedule I property which was personal property of the mahanth. He had also invited attention of this Court towards certain orders passed in the ceiling case wherein land in question was notified showing the mahanth to be the landholder.

14. Repelling this part of submission of Mr. Ambuj Nayan Choubey, learned counsel for the Board has submitted that it would be very difficult for this Court or even for the trial Court to hold that Schedule-I property, which was already registered in the Board as property of the religious trust vide registration No. 44, was actually the personal property of the mahanth. In this context he had explained that even the land of deities were sought to be represented in the ceiling proceeding by mahanth himself and as such when the Board in its wisdom had framed a scheme u/s 32 of the Act, remedy for the plaintiff-mahanth, who was himself made Chairman of the Trust Committee constituted by the Board in the notification dated 15.7.2006, was to move before- the District Judge, who alone had been empowered to set aside the scheme framed u/s 32 of the Act. Mr. Choubey to that extent had also questioned the maintainability of the suit itself in view of provisions made u/s 77 of the Act which according to his submission bars any suit against any order passed by the Board. In this connection reliance was also placed by him on Section 57 of the Act to show that even an order u/s 32 of the Act also was one which was covered by the bar of suit in terms of Section 77 of the Act. Concluding his submission Mr. Choubey had drawn attention of this Court to the admitted document filed by the plaintiff mahanth i.e., supplementary affidavit showing that public offerings were being made in the temple which by itself was proof of the fact that test of religious trust as defined u/s 2(u) of the Act was undoubtedly fulfilled by the religious trust in question.

15. This Court on appreciation of the aforesaid submissions would find that prima facie the suit filed by mahanth is both mala fide as also not maintainable so far it relates to questioning the order of the Board dated 15.7.2006. Framing of a scheme for a religious trust by the Board is well within the power of the Board u/s 32 of the Act which reads as follows:-

"32.Power of Board to settle schemes for proper administration of religious trust.-

(1) The Board may, of its own motion or on application made to it in this behalf by two or more persons interested in any trust-

(a) settle a scheme for such religious trust after making such enquiry as it thinks fit and giving notice to the trustee of such trust and to such other person as may

appear to the Board to be interested therein;

(b) in like manner and subject to the like conditions, modify any scheme settled under this section or under any other law or substitute another scheme in its stand:

Provided that any scheme so settled, modified or substituted shall be in accordance with the law governing the trust and shall not be contrary to the wishes of the founder so far as such wishes can be ascertained,

And it may contain provisions for-

(a) constituting a committee consisting of not more than eleven persons for the purpose of assisting in the whole or any part of the administration of the religious trust,

(b) determining the powers and duties of such committee; and

(c) any other relevant matter incidental to the framing and functioning of such scheme.

(2) A scheme settled, modified or substituted instead of another scheme under this section shall unless otherwise ordered by the District Judge on an application, if any, made under subsection (3), come into force on a day to be appointed by the Board in this behalf and shall be published in the Official Gazette.

(3) The trustee of, or any other person interested in, such trust may within three months from the date of the publication in the Official Gazette of the scheme so settled, modified or substituted instead of another scheme, as the case may be make an application to the District Judge for varying, modifying or setting aside the scheme, but subject to the result of such application, the order of the Board under sub-sections (1) and (2) shall be final and binding upon the trustee of the religious trust and upon every other person interested in such religious trust.

(4) An order passed by the District Judge on any application made under sub-section (3) shall be final."

16. From a bare reading of sub-section (3) of Section 32 of the Act it is clear that the only remedy against such scheme framed including constitution of a Trust Committee by the Board is to file an application before the District Judge for modifying or setting aside the scheme. In this background, the moment this Court would find that there is a specific prayer in the suit filed by plaintiff-mahanth for also setting aside the notification contained the order of the Board dated 15.7.2006. as would be evident from the second part of prayer of the relief in the plaint quoted above, it has to held that the suit so far it relates to assailing the validity of the order dated 15.7.2006 is not maintainable in view of the specific bar created u/s 77 of the Act which reads as follows:-

"77, Bar of suits- Save as other wise provided in this Act, no suit shall be brought

in any civil court to set aside or modify any order made under this Act, and no suit shall lie against the Board, the President or any other member or the Superintendent for any thing in good faith done or purporting to be done under this Act."

17. A faint attempt made by Mr. Dwivedi that the expression "order" used in Section 77 of the Act will not cover an order u/s 32 of the Act passed by the Board on 15.7.2006 has to be only noticed for its being rejected in view of Section 57 of the Act which reads as follows:-

"57. Order of Board passed under clause (2)(h) of Section 28 or Section 33 to be enforceable as a decree of Civil Court.-Every order of the Board passed under clause (h) of sub-section (2) of Section 28, sub-sections (1) and (2) of Section 32. sub-section (1) of Section 33 shall be enforceable by any Civil Court having local jurisdiction in the same manner as a decree of such court."

18. Thus, it is very much clear that when the court below had held in the impugned order that there was no prima facie case of the plaintiff-mahanth as against the Board it had in the mind the provisions of Section 77 of the Act barring the suit against any order of the Board

19. This Court, however, must has ten to add the suit seeking declaration of right, title and possession over any land by itself is not barred and therefore the plaintiff appellant-mahanth can definitely maintain the suit for part of the suit property if by evidence it is proved by him that the property of the trust and property of the plaintiff-mahanth were different and distinct.

20. For the purpose of injunction however the finding of the court below that the plaintiff-appellant-mahanth had no prima facie case against the Board even in respect of the suit property in Schedule-I, allegedly personal property of the mahanth, does not suffer from any error, inasmuch as. the said property also long back has been separately recorded as Religious Trust within the meaning of section 2(u) of the Act, vide registration No. 44. In any event the findings recorded by the court below holding that the plaintiff-appellant mahanth had no prima facie case, balance of convenience or irreparable loss. the three ingredients necessary for grant of injunction does not suffer from any error and as such the appeal of the appellant-mahanth must fail.

21. Before parting with, this Court having noticed that there is a strong case of the Board that the suit itself either as a whole or in part is not maintainable, would direct the court below to frame a preliminary issue and decide as to whether the suit filed in the form it has been presented in the plaint is maintainable. The court below will also keep into account that any dispute raised by the plaintiff as to whether the suit property is covered by the expression "Religious Trust" as defined under Section 2(1) of the Act has to be initially decided by the Board itself in terms of Section 28(2)(u) of the Act, which empowers the Board to decide all such dispute whether any trust is public or a private trust in accordance with the definition u/s 2(1) of the Act. While deciding

the issue of maintainability of the suit it would be also the duty of the court below to look into the conduct of the plaintiff-mahanth, who very happily continued as Chairman of the Trust Committee of the Board dated 15.7.2006 for a period of almost two years and had exercised all the powers of Chairman of the Trust Committee in terms of aforesaid order u/s 32 of the Act dated 15.7.2006 before filing the suit and seeking injunction in the month of March/April, 2008.

22. In the result, the appeal of the Board (M.A. No. 684 of 2008) is allowed and the underlined portion in last paragraph of the impugned order restraining the Board from interfering and managing the Schedule-I property and further directing management of Trust as per samarpannama dated 14.12.1948 is hereby set aside. Subject to the aforesaid modification in the impugned order, the findings and the conclusion in the impugned order rejecting the prayer of injunction of the plaintiff-appellant is hereby upheld and accordingly the appeal of the plaintiff-appellant-mahanth (M.A. No. 752 of 2008) is dismissed with the aforesaid observations and directions. There would be, however, no order as to costs.